

EXHIBIT 1

Picard v HSBC Bank

Peter Fischer 2/6/2019

Page 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SECURITIES INVESTOR PROTECTION CORPORATION, Adv. Pro. No.
Plaintiff, 08-01789 (SMB)
v. SIPA Liquidation
BERNARD L. MADOFF INVESTMENT (Substantively
SECURITIES LLC, Consolidated)
Defendant.

-----x
In Re:

BERNARD L. MADOFF, Debtor.

-----x
IRVING H. PICARD, Trustee for Adv. Pro. No.
the Substantively Consolidated 09-01364 (SMB)
SIPA Liquidation of Bernard L.
Madoff Investment Securities
LLC and Bernard L. Madoff,
Plaintiff,

v.

HSBC BANK PLC, et al.,

Defendants.

-----x

Videotaped 30 (b) (6) Deposition

of Alpha Prime Fund Limited

by and through its corporate designee

PETER FISCHER

Wednesday, February 6, 2019

9:42 a.m.

1

2

3 TRANSCRIPT of testimony as taken by
4 and before MONIQUE VOUTHOURIS, Certified Court
5 Reporter, RPR, CRR and Notary Public of the
6 States of New York and New Jersey, at the
7 offices of Baker & Hostetler, 45 Rockefeller
8 Plaza, New York, New York, on Wednesday,
9 February 6, 2019, commencing at 9:42 a.m.

10

11

12

13

14

15

16

1 /

18

19

20

2

Picard v HSBC Bank

Peter Fischer 2/6/2019

Page 3

1 A P P E A R A N C E S:

2 BAKER & HOSTETLER, LLP
3 45 Rockefeller Plaza
4 New York, New York 10111
5 212.589.4200
6 BY: OREN J. WARSHAVSKY, ESQ.
7 owarshavsky@bakerlaw.com

8 GEOFFREY A. NORTH, ESQ.
9 gnorth@bakerlaw.com

10 CARA McGOURTY, ESQ.
11 cmcgourty@bakerlaw.com

12 For Irving Picard, Trustee

13 DUFFY AMEDEO LLP
14 275 Seventh Avenue
15 7th Floor
16 New York, New York 10001
17 212.729.5832
18 BY: TODD E. DUFFY, ESQ.
19 tduffy@duffyamedeo.com

20 ALSO PRESENT:

21 CHRISTIAN HAUSMANINGER, ESQ.
22 ANDREW RONA, German Interpreter
23 ERIK DAVIDSON, Videographer

24
25

Picard v HSBC Bank

Peter Fischer 2/6/2019

Page 119

1 (Recess 1:14 p.m. - 1:58 p.m.)

2 THE VIDEOGRAPHER: We are back on
3 the record. The time is approximately 1:58 p.m.

4 BY MR. WARSHAVSKY:

5 Q. Mr. Fischer, I just have one other
6 question. I want to go back to Exhibit 15 which
7 we had discussed briefly before the break. If I
8 wanted to understand this analysis better, who
9 would I speak to, if you know?

10 A. To Mr. Steurer most probably.

11 Q. Thank you. Okay.

12 Did Alpha Prime either create or
13 receive a litigation hold or legal hold notice
14 after Madoff's arrest?

15 A. What is a legal hold office?

16 Q. Did anyone circulate instructions
17 about preserving documents for Alpha Prime?

18 A. For Alpha Prime? I was only -- I
19 remember only one issue and this was from Latham
20 in 2012, I guess.

21 Q. From --

22 A. This is Primeo -- Bank Austria
23 Primeo case, yeah.

24 Q. And who is Lessan? I'm sorry, who
25 is --

Picard v HSBC Bank

Peter Fischer 2/6/2019

Page 141

1 Q. Do you know whether any Alpha
2 Prime data that was hosted by Project Partners
3 was not included on these DVDs?

4 A. I don't know.

5 Q. Who would know?

6 A. Project Partner most probably.

7 Q. Thank you.

8 Do you know if Alpha Prime used
9 any other email servers other than the email
10 server hosted by Project Partners?

11 A. When you're saying Alpha Prime,
12 then meaning, of course, also the directors,
13 right?

14 Q. I don't mean the emails that we
15 spoke -- I'm not talking about the domains that
16 we discussed earlier.

17 A. Okay. Okay. Good. No. Sorry.

18 Q. Maybe I should ask the question
19 differently because you might have answered a
20 different question. So I'll start what I was
21 asking do you know if they know -- do you know
22 whether Alpha Prime used any other email servers?

23 A. No.

24 Q. You don't know, okay.

25 MR. DUFFY: I'm not sure -- does

Page 161

1 Dr. Hausmaninger to find it out in getting in
2 contact with them.

3 Q. Did you have any contact directly
4 with Project Partners?

5 A. No.

6 Q. And you think Project Partners is
7 the one that understands this issue the best,
8 the issues in this letter?

9 A. I guess so, yes.

10 Q. Can you think of anybody who
11 understands these issues better than Project
12 Partners?

13 A. They were the service provider, so
14 I guess they have to understand best.

15 Q. The -- if you turn to the second
16 page of the letter.

17 A. Yes.

18 Q. -- the -- I think you said earlier
19 to your knowledge no data was lost. But I want
20 you to look at the first full paragraph on page
21 2. It says, "I can confirm that after the crash
22 we continued to work with the new RAID-1 server
23 to which the company of Steurer had loaded the
24 recovered data of the clients. The old server
25 was disposed of."

Picard v HSBC Bank

Peter Fischer 2/6/2019

Page 163

1 restored."

2 Do you know what this was

3 referring to?

4 A. I can only refer to that what we
5 were talking about. But I in October -- in
6 October 2007 I was not aware of any -- any data
7 loss also.

8 Q. But when we spoke a few minutes
9 ago you said there was no data loss. Here this
10 says "a loss of an unknown number of emails
11 which could not be restored." Can you explain
12 why that's -- why this is different than your
13 recollection?

14 A. No.

15 Q. If not, that's okay.

16 A. I can't remember.

17 Q. If we turn to Exhibit 15, if we
18 look at the bottom of the first page, it says,
19 the second-to-last paragraph -- I'm sorry. The
20 bottom of the second page --

21 A. Second page.

22 Q. Second page. The second-to-last
23 paragraph, it says, "I am almost 100 percent
24 sure that a loss of data occurred. This is
25 almost inevitable with such an incident. Since